IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5033 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALIBHAI UMARMIYA MALEK & 3 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR SP MAJMUDAR for Petitioner(s) : 1 - 4.
GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 5.
MR PR NANAVATI for Respondent(s) : 5,
MR KD VASAVADA for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/04/2006

ORAL JUDGMENT

1.By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the

judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, dated 1.11-12.2005 i.e. common judgment and order passed in revision application No.31/2000 with revision application No.5/2004 in allowing the same quashing and setting aside the order passed by the Collector, Ahmedabad, dated 29.2.2000 passed in revision application No. 198/99 and restoring the order passed by the Deputy Collector, Dholka Prant, Dholka, dated 12.7.1999 passed in RTS appeal No.40/99.

2.At the outset it is required to be noted that the dispute is with regard to mutation entry in the revenue record with respect to the land bearing Survey Nos. 2023/4 and 2043/1 situated at Sanand, Taluka Sanand, District Ahmedabad. It appears from the record that the lands bearing Survey No. 2023/4 and 2043/1 were running in the name of one Amumiya Kadumiya and he died on 21.11.1941. That after his death, the name of Umarmiya Kadumiya was mutated in the record of rights with respect of land bearing

Survey No. 2023/4 by Entry No. 6710 dated 14.9.1953 and with regard to the land bearing Survey No. 2043/1, Entries were made being Entry No. 9335 dated 15.9.1964 and Entry No. 10810 dated 30.4.1971. Being aggrieved and dissatisfied with the aforesaid Entries, the respondent No.5 herein approached the Deputy Collector, Dholka Prant, by way of RTS appeal No. 452/2000 and the said appeal came to be dismissed on the ground of limitation by the Deputy Collector, Dholka Prant, by its order dated 16.10.2000. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Dholka Prant, dated 16.10.2000 passed in RTS Appeal No. 452/2000, the respondent No.5 herein preferred revision application being revision application No.185/2002 before the Collector, Ahmedabad, and the Collector, Ahmedabad, vide its order dated 31.12.2003 dismissed the said revision application confirming the order passed by the Deputy Collector, Dholka Prant, dated 16.10.2000. It appears that one another appeal was filed by the respondent No.5 herein before the Deputy Collector,

Dholka Prant, being RTS appeal No. 40/99 challenging the subsequent Entry No. 17001 and the same came to be allowed by the Deputy Collector, Dholka Prant, by its order dated 12.7.1999 against which, the petitioners preferred revision application before the Collector, Ahmedabad, being revision application No.198/99 and the Collector, Ahmedabad, by its order dated 29.2.2000 allowed the said revision application and quashed and set aside the order passed by the Deputy Collector, Dholka Prant, dated 12.7.1999 passed in RTS appeal No.40/99. Being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad, dated 29.2.2000 passed in revision application No. 198/99, a revision application No. 31/2000 came to be filed and at the same time, being aggrieved and dissatisfied with the order passed by the Collector, Ahmedabad, dated 31.12.2003 passed in revision application No. 185/2002 in dismissing the said revision application confirming the order passed by the Deputy Collector, Dholka Prant, dated 16.10.2000 in confirming the aforesaid Entries, the

petitioners preferred the revision application being revision application No. 5/2004 before the Principal Secretary (Appeals), Revenue Department, State of Gujarat, and both the aforesaid revision applications came to be heard together and the Principal Secretary (Appeals), Revenue Department, State of Gujarat, by its impugned judgment and order dated 28.11.2005/1.11-12.2005 has allowed both the aforesaid revision applications and quashed and set aside the order passed by the District Collector, Ahmedabad, dated 29.2.2000 passed in revision application No.198/99 in restoring the order passed by the Deputy Collector, Dholka Prant, dated 12.7.1999 passed in RTS appeal No.40/99. Being aggrieved and dissatisfied with the common judgment and order dated 1.11-12.2005 passed in aforesaid two revision applications being revision application Nos.31/2000 and 5/2004, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3.Shri S.P.Majmudar, learned advocate appearing on behalf of the petitioners has vehemently submitted that considering the fact that the Entries in question were challenged after unreasonable period, the Deputy Collector as well as the Collector were justified in not entertaining the dispute raised by the respondent No.5 herein and the Principal Secretary (Appeals), Revenue Department, State of Gujarat, has committed an error in allowing the revision applications quashing and setting aside the order passed by the Deputy Collector as well as Collector and quashing and setting aside the Entries in question. He has also further submitted that in fact, the order passed by the Collector, Ahmedabad, dated 31.12.2003 passed in revision application No.185/2002 as well as the order passed by the Deputy Collector, Dholka Prant, dated 16.10.2000 passed in RTS appeal No. 452/2000 are not challenged before the Principal Secretary (Appeals), Revenue Department, State of Gujarat, while passing the impugned common judgment and order dated 1.11-12.2005 and therefore, it is

requested to allow the present Special Civil Application.

4.The petition is opposed by Shri P.R.Nanavaty, learned advocate appearing on behalf of the respondent No.5, and it is submitted that in fact, there was a fraud committed by the petitioners while mutating their names in the impugned Entries and as soon as the same was detected, the appeals were filed. However, the same came to be dismissed only on the ground of limitation without entering into the merits of the case and considering the merits of the case, the learned Principal Secretary (Appeals), Revenue Department, State of Gujarat, has rightly allowed the revision applications quashing and setting aside the order passed by the Deputy Collector, Dholka Prant, as well as Collector, Ahmedabad, and has rightly restored the order passed by the Deputy Collector, Dholka Prant, dated 12.7.1999 passed in RTS appeal No.40/99 and therefore, it is requested to dismiss the present Special Civil Application.

5.Heard the learned advocates appearing on behalf of the parties.

6.At the outset it is required to be noted that the dispute is with regard to mutation entry in the revenue record. As held by the Hon'ble Supreme Court as well as by this Court in catena of judgments, mutation entry in the revenue record does not confer any right, title or interest and it is only for the fiscal purpose and for the purpose of recovery of the revenue and to show and establish the prima-facie possession. It also cannot be disputed that so far as the revenue authorities dealing with the dispute with regard to mutation entry popularly known as RTS proceedings are concerned, are not required to decide the dispute with regard to title. If there is any dispute with regard to title, the parties are required to approach the competent Civil Court for establishing their rights and on the basis of the judgment and decree, that may be passed by the competent Civil Court crystallizing the rights of

the parties, necessary entry can be made in the revenue record.

7. In the present case, as stated above, there is a dispute with regard to title by succession between the parties. It is also required to be noted that as on today, the petitioners, who are disputing the rights of the respondent No.5, have not filed any Civil Suit for declaration that they are the heirs and that respondent No.5 has no right, title or interest. The Entries are made on the basis of the survivorship and as stated above, merely on the basis of the entry in favour of the respective parties, ipso-facto, it will not confer any right, title or interest and on the basis of the entry in the revenue record, possession cannot be disturbed. In view of the above and considering the rival contentions, if the names of the co-heirs are mutated in the revenue record and having observed that the revenue authorities are not required to decide the disputed question of title and the revision applications are allowed by the Principal

Secretary (Appeals), Revenue Department, State of Gujarat, in that case it cannot be said that any illegality committed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, and/or by the Deputy Collector, Dholka Prant. However, it is observed that the said Entries will always be subject to the determination of the rights between the parties by the competent Civil Court and necessary Entries, even as per the provisions of the Bombay Land Revenue Code, are required to be made on the basis of the judgment and decree, that may be passed by the competent Civil Court.

8. With these observations and direction, the present Special Civil Application is required to be dismissed and is accordingly dismissed. Notice is discharged. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.